To: White, Terri-A[White.Terri-A@epa.gov]
From: Smith, Bonnie
Sent: Tue 2/4/2014 4:00:37 PM
Subject: I did no formatting .... what may be asked ... background...

Terri Just included key questions and responses… I doubt that he'll specifically speak about regs.. but I did include what we have said.

What everyone wants to know now is: Is the water safe to drink? Would he drink it? How does he know it's safe - - and Jon and Vicki both talked about that on the call and will discuss with Ken today.

EPA Statement on WV Spill Response

Regional Administrator Shawn M. Garvin

2/5/14

First, I want to assure you that EPA is on the job. We have been on the job since day one. On January 9th, we were informed of the spill and made the quick decision to take a number of actions, including deploying two of our On-Scene Coordinators to be here in Charleston, the very next day, on the ground and working to support the State, West Virginia American Water Company and other responding agencies.

EPA's job from day one has been to support the State of West Virginia, who has the lead and still has the lead for this response. In addition to deploying two of our On-Scene Coordinators, we assigned EPA personnel during that first weekend to work at the FEMA response center in Philadelphia on a 24-hour basis to gain round-the-clock information as the situation evolved. Also,

EPA's drinking water experts worked closely with other Federal and State agencies in West Virginia as they implemented a plan for getting the drinking water system back on-line.

Our role as a support agency has been steadfast and strong, and the State has communicated with us throughout this response. The EPA managers, scientists and technical experts who have been consulted for various aspects of the response have reiterated to me that the response activities led by the State to date, are in line with those EPA would have taken if we were the lead agency.

EPA can confirm today that the spill site is stabilized. Work is underway to empty and dismantle all of the tanks. West Virginia American Water Company's sampling results remain at non-detect or low parts per billion levels – in other words at orders of magnitude below the health risk levels recommended by the CDC for MCHM and PPH.

EPA remains committed to supporting the State as necessary to complete the cleanup of the spill site, and to ensure appropriate actions are taken to protect people's health.

Q. Why hasn't EPA wanted to talk about the spill?

A. EPA has always said that the State of West Virginia had the lead for this response. As such, we felt it was more appropriate for the State to respond to many of the questions that were being asked in those first few days about what was happening on the ground. We did respond to questions that were

appropriate for us to answer. But, just as the citizens of West Virginia, EPA has had to rely on other federal agencies – the CDC and ATSDR for information about the toxicity and health concerns related to the two chemicals that contaminated the Elk River and the source of your drinking water.

Q. Many people are still not drinking the water because they fear it isn't safe. Can you assure them that the water is safe to drink and cook with? Would you drink the water or have your family drink the water?

A. State and Federal (ATSDR/CDC) health officials agreed on a protective health level for MCHM and PPH. EPA supports the approach the State and WVAWC have taken to flush the drinking water system to assure the 1 part per million MCHM level is achieved. Sampling results consistently show that the flushing approach has been effective. A re-evaluation of earlier test results showed no PPH detected.

I get that people are still concerned about the safety of their water and what, if any, effects it may have on their families' health. EPA has been working with a group of scientists and lab experts who have increased confidence in laboratory analysis of MCHM and PPH in water. Several labs were successful in obtaining lower detection limits for both chemicals. (Don't want to guess about whether you would drink the water; will leave that up to you.)

Q. Why, after 27 days into this response, are you now here? What took you so long?

A. As I said, EPA has had hazardous waste cleanup experts ~~an~~ on-the-ground ~~presence the day~~ immediately after the spill. In addition to being briefed daily on the situation, I've been in regular contact with Federal and State officials throughout the response. I also acknowledged that the State was taking actions we felt were appropriate. I'm here today to assure West Virginian citizens affected by this incident that the State and Federal agencies are in this together and we're working diligently to alleviate their concerns and restore confidence in their drinking water.

Questions that the RA may be asked and the response we have previously provided.

This is a question that Ken keeps raising and will be discussed further in an interview with Jon Cap, Vicki and Fran this afternoon.

1. How as the 1 ppm "safe level" calculated? What was EPA's involvement, and how does this method match EPA's standard approach to such things? -

RESPONSE on 1/24/14 was: State and federal (ATSDR/CDC) health officials determined that a level of 1 part per million (ppm) of MCHM is protective of public health and the state/WVAWC will use the flushing process to assure that this level is achieved throughout the system. EPA has offered technical assistance to the state during the restart efforts.

Additional EPA's response to Ken Ward on 1/24/14:

2. EXACTLY what is being done to contain and remediate the site? What is the process going forward for dealing with that?

RESPONSE: West Virginia and WVAWC are working to remediate the site and are in the best position to explain the steps they've undertaken to date and what remains to be done. EPA continues to be available for technical assistance.

+ EPA's MORE RECENT STATEMENT: In an effort to strengthen laboratory analysis of MCHM and PPH, chemists and lab managers from nine organizations including EPA, are working collaboratively to share information and analytical data about the mixture. Participants

include the National Guard, WV American Water, American Water Research, REI Consulting, DuPont Inc., Dow Inc., Matric Inc., ATSDR, and EPA. The group is looking to identify analytical techniques that will allow for lower detection limits for the single compounds, MCHM and PPH in water. The goal of the lower detection limits will be to increase the capacity of laboratories to detect MCHM and PPH in water at orders of magnitude below the health risk levels.

3. How is EPA's response to Sen. Rockefeller's letter asking for a long-term study?

RESPONSE: We've received the letter and will respond appropriately.

4. Has EPA reviewed the enforcement actions DEP had to take at the Nitro site where Freedom was taking this material? Is EPA concerned that, given that, neither Freedom nor DEP can be trusted with the cleanup? How could that stuff not have been watched more closely?

RESPONSE: EPA is aware of the enforcement actions DEP has taken at the Nitro site. Along with other federal agencies, EPA is working closely with our West Virginia state and local partners responding to the Freedom Industries incident and support the actions taken thus far. We are evaluating the full range of federal environmental authorities that may assist in responding to the environmental and public health risks, address any environmental violations, and minimize threats to our waters and public health.

5. Is EPA concerned that DEP never inspected this site before?

RESPONSE: Under the Clean Water Act and the Safe Drinking Water Act, EPA has the mission and the authority to protect the quality of water bodies and drinking water through a wide range of programs and policies. It is important to note that, for the most part, the states have the primary responsibility for implementing these programs. EPA's water security program covers a host of topics from surveillance and response systems for contamination, emergency response tools, laboratory support in an emergency, risk assessment tools, community based water resiliency exercises, water and energy sector interdependencies training, state and mutual aid tabletop exercises, and climate change tools.

6. Is there something about this chemical that might mask its impacts or its continued presence in our water?

RESPONSE: Please contact ATSDR/CDC for information about the impacts of these chemicals.

7. How do we know the flushing methods given to the public work, and what will the long-term impact on home plumbing systems be of having this industrial chemical in them?

RESPONSE: The State and WVAWC continue to report diminishing presence of MCHM in sampling results, demonstrating that the flushing methods have been effective. With limited available information about this chemical, it is difficult to say what long-term impacts, if any, would be on home plumbing systems.

8. Can the local wastewater treatment plant properly filter this material from water being put back into the river?

RESPONSE: Please reach out to the State and WVAWC, who are the lead on this clean up.

9. Has EPA reviewed the study or studies that were the basis for the LD50 for this material?

RESPONSE: While EPA has not provided a formal peer review of any study that was the basis for the LD-50, EPA scientists did provide comments on a draft analysis of the value for MCHM.

10. Is EPA concerned about the lack of emergency planning, the lack of data about this chemical, and the lack of it being considered in the source water protection plan for the Elk site?

RESPONSE: MCHM was one of more than 60,000 chemicals in commerce when the Toxic Substances Control Act (TSCA) was passed in 1976. The 1976 statute "grandfathered" in existing chemicals, and provided EPA with very limited ability to require testing on those

existing chemicals to determine if they are safe. EPA continues to support much needed legislative reform to ensure that the Agency has updated authority to more effectively assess and regulate potentially harmful chemicals.

Depending on the nature of the spill, EPA has statutory response authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Oil Pollution Act (OPA). EPA provides support when requested or when state and local first responder capabilities have been exceeded. In carrying out these responsibilities, EPA coordinates with other EPA programs, other federal agencies, states, tribes, and local governments.

With respect to prevention and preparedness in advance of a spill or release, EPA also has statutory regulatory authority for oil storage facilities under the Clean Water Act (Spill Prevention, Control, and Countermeasure Program – SPCC, which pertains to oil spills but currently does not cover spills of hazardous substances) and for chemicals under the Clean Air Act (Risk Management Program – RMP – to address methods to minimize and respond to releases).

The Freedom Industries facility in West Virginia is not regulated under the EPA's RMP since MCHM is not on the list of hazardous substances and the SPCC program does not apply to the tanks that released MCHM since that is not an oil. Also, the facility does not fall under EPA's Resource Conservation and Recovery Act (RCRA) program because the material leaked is a "product" and not a "solid waste" or hazardous waste that would require a permit and storage and management requirements, as defined under RCRA Subtitle C. However, from a response perspective, RCRA is being examined for applicability.

Under the Emergency Planning and Community Right-to-Know Act (EPCRA), state and local responders are to be provided hazardous information from the facility owners or operators. The state and local responders can then use this information to minimize risk and develop response plans.

EPA's response to Don Hopey about EPA regulations on 1/31/14. Also to Elizabeth

Shogren, NPR on 1/27/14 on EPA regulations for non-oil above ground storage tanks.

1.EPA regulations for above ground storage tanks that don't contain oil:

· Storage tanks containing hazardous waste are covered under RCRA.

· Multiple EPA regulations set air emission standards for above ground storage tanks containing a range of materials, such as oil, chemicals and solvents. These regulations for storage tanks limit air emissions by setting standards for both air toxics and volatile organic compounds VOCs.

· Air toxics standards are typically set based on the industry sector, using National Emission Standards for Hazardous Air Pollutants. One example for above ground storage tanks is the NESHAP for Organic Liquids Distribution.

· Standards regulating VOC emissions are commonly set based on the pollutant emitted or the material being stored, using New Source Performance Standards (NSPS). An example NSPS for above ground storage tanks is the Standards of Performance for Storage Vessels for Petroleum Liquids rule. Another is the NSPS performance standards for tanks used in oil and natural gas production.

· The Pesticides Container and Containment rule sets standards to ensure that pesticide containers are strong and durable and establishes standards for secondary containment structures at certain bulk storage sites and for containment pads at certain pesticide dispensing operations. The purpose of these standards for secondary containment is to protect the environment from leaks and spills at bulk storage areas and from contamination due to pesticide dispensing operations. http://www.epa.gov/pesticides/regulating/containers.htm

2. EPA primarily regulates underground storage tanks under RCRA Subtitle I which addresses underground storage tanks that contain 1) petroleum or 2) hazardous substances. In addition RCRA subtitle C can apply to above ground and below ground tanks if the tanks contain hazardous waste and not product. In addition, many states have similar spill prevention programs and conduct inspections under their own laws. For detailed information about the requirements that may apply to above and underground storage tanks go to:

http://www.epa.gov/wastes/laws-regs/regs-haz.htm

http://www.epa.gov/superfund/policy/cercla.htm

http://www.epa.gov/osweroe1/content/lawsregs/opaover.htm

http://www.epa.gov/oust/fedlaws/

http://www.epa.gov/osweroe1/content/spcc/

In response to your request for the number of Region 3's UST inspections and enforcement actions in Pennsylvania over the past three years.

EPA UST* Inspections

2013 = 4

2012= 14

2011= 21

*Inspections performed by EPA or EPA's contractor at our request.

EPA UST Administrative Settlements (Enforcement)

2013= 2

2012= 1

2011= 3

EPA Early Statements - - 1/23/14

o **Regulatory issues:** EPA continues to work closely with other Federal and State agencies in West Virginia as they begin implementing a plan for getting the water system back on-line. As those efforts are already underway, EPA is also examining state and federal response authorities associated with the incident to determine next steps and the environmental laws and regulations applicable to the facility. This review will help inform EPA's activities going forward.

o **EPA role in the response:** EPA continues to work closely with other Federal and State agencies in West Virginia as they begin implementing a plan for getting the water system back on-line. The State of West Virginia and the West Virginia American Water Company (WVAWC) are developing a plan for flushing the system, along with sampling and analysis, that will allow residents to begin using their water as soon as possible. State and Federal (ATSDR/CDC) health officials have agreed that a level of 1 part per million (ppm) of methylcyclohexanemethanol is protective of public health and the State/WVAWC will use the flushing process to assure that the 1 ppm level is achieved throughout the system. The EPA supports this approach and has offered sampling and monitoring assistance to the State during the restart efforts.

o **TSCA:** 4-methylcyclohexane was one of more than 60,000 chemicals in commerce when the Toxic Substances Control Act (TSCA) was passed in 1976. The 1976 statute "grandfathered" in existing chemicals, and provided EPA with very limited ability to require testing on those existing chemicals to determine if they are safe. EPA continues to support much needed legislative reform to ensure that the Agency has updated authority to more effectively assess and regulate potentially harmful chemicals.

o **PPH:** Early January 21, during an operations meeting at the facility, Freedom Chemical informed the State of West Virginia, the West Virginia American Water Company, and EPA that another chemical was part of the release that occurred on January 9, 2014. This chemical has been identified as a proprietary mixture of polyglycol ethers (PPH). It was in the same tank and

entered the water system at the same time as the MCHM. PPH represented a relatively small percentage (approximately 5%) of the total volume in the tank. EPA shared this information with the Chemical Safety Board and the Agency for Toxic Substances and Disease Registry (ATSDR).

The Agency for Toxic Substances and Disease Registry (ATSDR) provided the following information regarding the newly identified chemical: Toxicologic information on PPH is limited. Based on the Material Safety Data Sheets (MSDS) provided by the manufacturer, the reported toxicity of this material appears to be lower than the toxicity of MCHM (LD50 > 2000 mg/kg for the primary component of PPH vs. 825 mg/kg for MCHM). Given the small percentage of PPH in the tank and information suggesting similar water solubility as MCHM, it is likely that any amount of PPH currently in the water system would be extremely low. However, the water system has not been tested for this material.

EPA will continue to support work with the State, the WVAMC and its federal partners to address this new development and continues to be available for sampling and monitoring assistance.

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